



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,585	08/10/2005	Hisae Kume	SPO-121	7558

23557 7590 05/22/2006

SALIWANCHIK LLOYD & SALIWANCHIK  
A PROFESSIONAL ASSOCIATION  
PO BOX 142950  
GAINESVILLE, FL 32614-2950

EXAMINER

SINGH, SATYENDRA K

ART UNIT PAPER NUMBER

1651

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/535,585

Applicant(s)

KUME ET AL.

Examiner

Satyendra K. Singh

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-17 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Species Election*

This application also contains **claims directed to more than one species** of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species claimed are as follows:

Applicant is required to elect **ONE** specie from **each** of the claims listed below.

**Claims 2 and 10** recite the following species of milk proteins:

a milk protein concentrate (MPC), a whey protein concentrate (WPC), a whey protein isolate (WPI),  $\alpha$ -lactoalbumin,  $\beta$ -lactoglobulin, and lactoferrin.

Applicant is required, in reply to this action, to elect **a single species from each of the claims discussed above** (i.e. claims 2 and 10) to which the claims shall be restricted if no generic claim is finally held to be allowable. **The reply must also identify the claims readable on the elected species, including any claims subsequently added.** An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Claim(s) 2 and 10 recite all the species for milk proteins used in the composition;  
and

Claim(s) 1, 3-5, 7-9, 11-13, and 15-17 are deemed to be generic.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Pursuant to PCT Rule 13.2 and PCT Administrative Instructions, Annex B, Part 1(f)(I)(B)(2), the species are not art-recognized equivalents.


The Examiner notes that the instant application is a national stage entry of PCT/US00/08013 filed under 35 U.S.C. § 371. For purposes of restriction, lack of unity practice has been applied to the pending claims under 35 U.S.C. § 121 and 372. Lack of unity will be reassessed at each stage of prosecution hereafter.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Art Unit: 1651

To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1651. The supervisor for 1651 is Michael Wityshyn, (571) 272-0926. The normal work schedule for Examiner Satyendra Singh is 9-5MF (alternate Fridays OFF).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Satyendra K. Singh whose telephone number is (571) 272-8790. The number of the Fax Center for the faxing of official papers is (571) 272-8300.

  
Satyendra K. Singh  
Patent Examiner  
Art Unit 1651

SANDRA E. SAUCIER  
PRIMARY EXAMINER

